

INITIAL STATEMENT OF REASONS

Tahoe Exemption Extension, 2000

[July 28, 2000]

Title 14 of the California Code of Regulations (14 CCR):

Amend:

§ 1038(f)(15)

Exemption

PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THE REGULATIONS ARE INTENDED TO ADDRESS

In November of 1995, the Board adopted regulations to address conditions that developed as a result of the prolonged drought that preceded the winter of 1994/95. The drought contributed to increased levels of forest insects and disease and caused severe tree mortality in the Lake Tahoe Basin. This created conditions that could have resulted in a catastrophic fire and subsequent flooding, soil erosion, and significant impacts to other vital resources in the area. At that time, the Board desired to give landowners greater flexibility to remove insect and disease damaged timber while the drought effects still linger. The existing exemption regulations under 14 CCR § 1038(b) regarding the percent volume limit for removal of dead and dying trees could have hindered hazard reduction in the Lake Tahoe Basin. The greatest potential impact identified at that time was to water quality. Lake Tahoe is recognized by the federal government as an Outstanding National Resource Water. As such, no permanent or long-term reduction in water quality is allowed. Unless properly mitigated, logging activities could have potentially degraded water quality in the lake or its tributaries.

The regulations adopted by the Board in 1995 were part of a strengthened effort by a number of agencies to reduce fuel hazard in the Tahoe Basin. The rules that existed prior to that decision (especially 14 CCR § 1038) were viewed as a disincentive to landowners removing dead and dying trees by requiring the expense and time for preparation and review of a timber harvest plan for volumes of dead and dying trees in excess of 10 percent. In adopting the new rules in 1995, the Board established specific criteria for the exemption for harvesting dead and dying trees within the affected area and established a "sunset" for the regulation, which would allow the regulating agencies to continue to monitor the effects of the drought and the critical conditions related to tree mortality in the Lake Tahoe Basin consistent with policies of the Tahoe Regional Planning Agency (TRPA). At that time, a period of five (5) years was deemed appropriate to treat the lingering effects of the drought.

Since 1995, the various agencies and groups working to maintain and enhance the health of the forest in the Lake Tahoe Basin for the protection of the beneficial uses of water and other resources in the area (i.e. CDF, TRPA, and the Forest Health Consensus Group

(FHCG)) have been monitoring the conditions related to forest health. At a recent meeting of the Board of Forestry and Fire Protection, a CDF representative reported to the Board that the Lake Tahoe Basin remains affected by increased levels of forest insects and disease and severe tree mortality. Conditions similar to those that led the Board to adopt special rules in 1995 continue to be of concern in the area. However, the regulations under 14 CCR § 1038(f) of the Forest Practice Rules that were intended to address these conditions will expire January 1, 2001.

SPECIFIC PURPOSE OF THE REGULATIONS

The Z'berg-Nejedly Forest Practice Act of 1973 (ref. Division 4, Chapter 8 of the Public Resources Code) established the Legislature's concern throughout the State relating to the use, restoration, and protection of the forest resources. The Legislature further recognized that these forest resources furnish recreational opportunities and aesthetic enjoyment, while providing watershed protection. The Legislature declared that it is the policy of the State to encourage responsible forest management that considers the public's need for watershed protection and recreational opportunities alike (ref. PRC § 4512). Furthermore, the Legislature stated its intent to create and maintain an effective and complete system of regulation for all timberlands. This system is to assure the productivity of timberlands and the goal of maximum sustained production of high quality timber products. It is also intended to give consideration to values related to recreation, watershed, wildlife, fisheries, regional economic vitality, employment, and aesthetic enjoyment (ref. PRC § 4513). Public Resources Code § 4551 gives the Board the authority to adopt such rules and regulations which will enable it to carry out its responsibilities to protect soil, air, fish and wildlife, and water resources, including but not limited to streams and lakes.

Pursuant to 14 CCR § 1038(f), persons who conduct timber operations for the removal of dead or dying trees on parcels of 20 acres or less in size within the Lake Tahoe Basin, that are not part of a larger parcel of land in the same ownership, are currently exempt from the plan preparation and submission requirements (PRC 4581) and from the completion report and stocking report requirements (PRC 4585 and 4587) of the Forest Practice Act. However, the regulations under this section of the Forest Practice Rules will expire January 1, 2001. The Department therefore requested that the Board extend the effective period of the rules under 14 CCR § 1038(f) for a period of two (2) years. The purpose of these proposed changes to the Forest Practice Rules is to extend the specific period of time that the regulations would be effective. This rulemaking action proposes to extend the effective date of those regulations until December 31, 2002. This change is proposed under subsection (f)(15).

NECESSITY

If the Board does not extend the effective period of the rules under 14 CCR § 1038(f), the regulations under this section of the Forest Practice Rules will expire January 1, 2001. This would not allow timberland owners in the Lake Tahoe Basin to be proactive in treating forest stand conditions similar to those that led the Board to adopt special rules in

1995 and could result in significant environmental impacts to this highly sensitive area. Therefore, the Board has determined that an extension of the effective period of the rules as proposed under this rulemaking action is necessary to prevent potential impacts due to increased levels of forest insects and disease and caused severe tree mortality in the Lake Tahoe Basin.

ALTERNATIVES TO THE REGULATIONS CONSIDERED BY THE BOARD AND THE BOARD'S REASONS FOR REJECTING THOSE ALTERNATIVES

No other alternatives to these proposed regulations were presented to, or considered by the Board at this time.

ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

The Board has not identified any alternatives that would lessen any adverse impact on small businesses.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS

14 CCR § 1038(f)(15) Exemption

The changes proposed under this rulemaking action would extend the effective date of rules adopted by the Board in November of 1995, until December 31, 2002. This is a two (2) year extension of the changes which became effective July 1, 2000.

The Board finds that an extension of the Tahoe Basin exemption rules is not expected to result in any increase in costs, and may result in a cost savings, to businesses and small businesses within the state of California. The Board finds that an extension of the Tahoe Basin exemption rules does not impose any new mandatory requirements on forest management activities. Rather, the rules extend an existing alternative approach to current Board Rules. With the expiration of 14 CCR § 1038(f), the Board rules (especially those under 14 CCR § 1038) could act as a disincentive to landowners removing dead and dying trees by requiring the expense and time for preparation and review of a timber harvest plan for volumes of in excess of 10 percent. Conditions similar to those resulting from the prolonged drought that preceded the winter of 1994/95 continue to contribute to increased levels of forest insects and disease and caused severe tree mortality in the Lake Tahoe Basin. Conditions are ripe for a catastrophic fire and subsequent flooding and soil erosion. The Board desires to give landowners greater flexibility to remove insect and disease damaged timber while the adverse conditions remain prevalent. The 10 percent volume limit in 14 CCR § 1038(b) for removal of dead and dying trees that would be applicable should the Board allow the rules to expire without an extension could hinder hazard reduction in the Tahoe Basin. This extension of these regulations is designed to continue to allow an economically feasible alternative to allow timberland owners to reduce the fuel hazard in the Tahoe Basin. The operations

are restricted to individual lots that are 20 acres or less in which a THP would not be appropriate.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

The Board of Forestry and Fire Protection consulted the following listed information and/or publications as referenced in this *Initial Statement of Reasons*. Unless otherwise noted in this *Initial Statement of Reasons*, the Board did not rely on any other technical, theoretical, or empirical studies, reports or documents in proposing the adoption of this regulation.

1. Public Resources Code §§ 4551, 4513, 4514.3, 4551.5, 4551.7, 4552, 4553, 4562.5, 4562.7, 4562.9, 4582, and 4584 *et seq.*
2. Barclays Official California Code of Regulations
3. OAL File No. 95-1113-03 S

Pursuant to Government Code § 11346.2(b)(6): In order to avoid unnecessary duplication or conflicts with federal regulations contained in the Code of Federal Regulations addressing the same issues as those addressed under the proposed regulation revisions listed in this *Statement of Reasons*; the Board has directed the staff to review the Code of Federal Regulations. The Board staff determined that no unnecessary duplication or conflict exists.

PROPOSED TEXT

The proposed revisions or additions to the existing rule language is represented in the following manner:

UNDERLINE indicates an addition to the California Code of Regulations, and

~~STRIKETHROUGH~~ indicates a deletion from the California Code of Regulations.

In order to clearly indicate those sections proposed for change, the text is presented in the following format:

- The specific rule language proposed to be amended under this rulemaking action is shown double-spaced.
- Single-spacing represents the full rule text as it currently exists under the Forest Practice Rules. This is provided for reference and readability only.
- All other text is existing rule language.